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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/551,963	10/05/2005	Thomas Roderer	4266-0109PUS1	6129
2292 7590 10/03/2008 BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747				
EXAMINER MARKOFF, ALEXANDER				
ART UNIT		PAPER NUMBER		
1792				
NOTIFICATION DATE		DELIVERY MODE		
10/03/2008		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

Office Action Summary

Application No.

10/551,963

Applicant(s)

RODERER ET AL.

Examiner

Alexander Markoff

Art Unit

1792

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 October 2006.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-10 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 05 October 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date 10/05/05
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement filed 10/05/05 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

The copies of EP 0980670, JP 2002-143067 and DE 4310189 were not submitted.

It is noted that the applicants stated that they previously submitted to the Office.

However, the referenced copies were not submitted to the Office.

EP 0980670, JP 2002-143067 and DE 4310189 were not considered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As to all claims:

The claims are indefinite because the terms "the interior", "the rinse water" and "the normal operation" in claim 1 lack proper antecedent basis.

The claims are also indefinite because the scope of the term "enforced" in claim 1 is not clear. Does this require execution of the step? It is noted that claim 7 uses the term "always executed". It appears that claim 1 does not require "execution", but only "enforcing". What is the difference between these terms? What is the scope of the term "enforced"?

It appears that in the broadest interpretation the recited third mode is optional for all claims except for claim 7. The claims are interpreted accordingly.

Claim 2 is further indefinite because it is not clear whether or not "a cleaning fluid whose temperature..." recited by claim 1 and "the cleaning fluid for cleaning the areas..." are the same.

Claim 2 is further indefinite because the term "the areas" lack proper antecedent basis.

Claim 3 is further indefinite because the term "the upper face and lower face" lack proper antecedent basis.

Claim 4 is indefinite because it is not clear what is required by the requirement of "corresponding" brushes.

Claim 5 is indefinite because the term "the first curtains" lacks proper antecedent basis.

Claim 6 is indefinite because the term "the second curtains" lacks proper antecedent basis.

Claims 8-10 are indefinite because the terms "the circulating pumps" and "the fresh water supply" lack proper antecedent basis.

Claims 9 and 10 are indefinite because the term "the advanced movement" lacks proper antecedent basis.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. Claims 1-4 and 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eberhardt, Jr. (US Patent No 4,561,904).

It is again noted that for the all claims except for claim 7 the recited third mode is interpreted as optional. It is also noted that the applicants have not defined what is referenced as "operating mode". Any every day operating of the dishwasher is readable on the recited modes if they not differentiated by recitation of manipulative steps required.

As to claims 1-4 and 8-10 Eberhardt, Jr. teaches a dishwasher with the belt, curtains and automatic control functions, which includes an automatic cut-off function, which is controlled using light barriers. See entire document especially Figure 1 and the related description.

It is noted that during operating the dishwasher the belt 24 is cleaned by the dishwasher as well as the dishes on the belt.

Eberhardt, Jr. does not specifically teach providing an overload breaker for the motor of the belt.

However, providing breakers for electrical devices was conventional in the art. This is evidenced by Eberhardt, Jr.

Eberhardt, Jr. teaches overload breakers for heaters.

It would have been obvious to an ordinary artisan at the time the invention was made to provide a cut-off breaker for the belt motor in Eberhardt, Jr. to prevent hazard associated with overloading an electrical device.

Eberhardt, Jr. does not specifically call the operation modes of the dishwasher as "Cleaning of dishes for milk products", "Cleaning of dishes for meat or meat products" and "Sabbath operation", however naming the operations by different names without reciting different manipulative steps does not differentiate one operation from another. None of the specific operating steps is disclosed for "Cleaning of dishes for milk products", "Cleaning of dishes for meat or meat products". The manipulative steps recited for the "Sabbath operation" are disclosed by or obvious over Eberhardt, Jr.

8. Claims 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eberhardt, Jr. (US Patent No 4,561,904) in view any one of Knight (US Patent No 3,249,150) and Fox et al (US Patent No 3,254,698).

As to claims 5-7:

These claims require the use of exclusive curtains during a specifically named operation.

Such is readable on the operation of the dishwasher of Eberhardt, Jr. after change of the curtains due to maintenance requirements.

The fact that the curtains are periodically changed during the lifetime of the dishwashers is evidenced by Knight and Fox et al

It would have been obvious to an ordinary artisan at the time the invention was made to change the curtains in Eberhardt, Jr. when such is required by the state of the curtains.

As to claim 7:

This claim requires the use of the fluid, which has a temperature higher than the temperature of the fresh water.

Eberhardt, Jr. does not specifically state that the temperature of the water, which is used for cleaning is higher than the temperature of the fresh water.

However, Eberhardt, Jr. uses heaters (68 and 88) to obtain needed temperature.

It would have been obvious to an ordinary artisan at the time the invention was made that the temperature of the cleaning liquid in Eberhardt, Jr. is higher than the temperature of the fresh water introduced in the dishwasher.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexander Markoff whose telephone number is 571-272-1304. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Barr can be reached on 571-272-1414. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Alexander Markoff
Primary Examiner
Art Unit 1792

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